



## **Control + C, Control + V: a brief history on the ethics of copying**

It might be stated as a general formula that the technology of reproduction detaches the reproduced object from the sphere of tradition. By replicating the work many times over, it substitutes a mass existence for a unique existence.

Walter Benjamin

File-sharing or piracy? Is the choice to copy or not to copy that simple? With a decent Internet connection and a few clicks on a keyboard, an entire socio-economic system finds itself besieged by our propensity to copy. A la Marx, with a paradigmatic revolution in the means of production, we are in the midst of experiencing a corresponding transformation of our social relations. Humans are workers and by the intentional acts of our intellect embodied through the work of our hands, we create objects that help us live more safely, efficiently, effectively, and enjoyably. But in the age of “technological reproduction(s)”, that is, in the age of instant copying of information, images, and music, have we traded our ability to transform the material of our natural environments into new works of uniquely auratic significance for the skills of merely copying and thus exploiting the works of others? Is copying exploitative? In the following paper, I explore

the ethical implications bound up in the phenomenon of copying as it has developed from its earliest forms as a time and labor intensive hand-crafted transcriptions and translations, through its explosive expansion by way of the modern printing press as a way of providing cheap copies of originals to the masses, into the reciprocal read/write phenomenon of our contemporary computer age. My intent is also to provide a phenomenological ethical analysis of the corresponding development of the legal system of copyright codes and acts based on its peculiar ethical norms.

Original works merit extraordinary kinds of attention but for widely divergent reasons. On the one hand, original works merit attention because of their monetary value. This kind of attention is given mainly by the profit-making business model which results in highly elaborate means of legal protection such as Title 17 of the U.S. Code and the Digital Millennium Copyright Act in the United States.<sup>1</sup> Why did we come up with social policies and ethical norms about proprietary rights of intellectual property in the first place? , how, if at all, has the recent phenomenon of the Internet and the World Wide Web affected the dynamics of intellectual property issues and copyright infringement? Attempts to protect one's personal property have been part of human social organization for many millennia. Such attempts have taken on special forms in Western societies, especially in the United States of America.<sup>2</sup> It is not clear, however, that the normative policies developed largely from merging the business interests of artists, authors, and producers with the socio-cultural identity of U.S. political structures can withstand the exponential changes happening in the technology and information systems phenomena without a radical correlative transformation.

In his essay from 1936, “The Work of Art in the Age of Technological Reproducibility,” Walter Benjamin comments, “Since the transformation of the superstructure proceeds far more slowly than that of the base, it has taken more than half a century for the change in the conditions of production to be manifested in all areas of culture.”<sup>3</sup> This means that changes in production methods precede cultural changes. What Benjamin stated more than 70 years ago still applies today. A change in the conditions of production triggered by the development of technology in the 1950s resulted in the creation of the modern computer and software code. Half a century later, these developments have resulted in the manifestation of radical changes in the cultural areas of writing, photography, movies, and music. Such radical changes have prompted lawmakers to create regulations that would limit these cultural advancements by making them conform to a proprietary business model. This is clearly evident in the United States where phenomena that dominate the landscape of several current trends in business and cultural affairs like source code, virtual space, and the P2P file-sharing programs based on MP3 technology have been submitted by lawmakers to copyright practices that have their historic origins in the 16<sup>th</sup> century. At the crux of these transformations, however, is the fact that humans not only create, invent, and discover, but we also copy. More importantly, we often copy precisely in order to create, invent, and discover.

Why do we copy? I copied this definition of “copy” from Encyclopedia.com which copied it from the The Concise Oxford Dictionary of English Etymology.

copy transcript of an original XIV; individual specimen of a work XV. (The etymol. sense of ‘abundance’ occurs XIV–XVII.) — (O)F. copie — L. cōpia abundance, plenty, pl. ability, opportunity (see [COPIOUS](#)). The sense ‘transcript’ which is med L. and Rom., arose from such phr. as copiam describendi facere give permission to transcribe, whence the sense ‘right of reproduction’ and simply ‘reproduction’. Hence copyhold, holding of lands by copy of the manorial court roll XV. Copyright right to print, publish, and sell copies of a work of literature or of art. XVIII. (© The Concise Oxford Dictionary of English Etymology 1996, originally published by Oxford University Press 1996.)

A glance into the Tenth Edition of Merriam Webster’s Collegiate Dictionary revealed a similar definition with the addition of the line: “2. one of a series of esp. mechanical reproductions of an original impression...” This is especially significant because it specifically relates to Walter Benjamin’s frequently anthologized and sampled—i.e. copied—essay, “The Work of Art in the Age of Technological Reproducibility.” Before the question of why we copy is answered, , a few observations about the definition of copy must be stated.

The definitions that I copied and pasted into my text are fairly standard definitions that include information of when the word ‘copy’ itself began to be used and became part of common usage sometime between the 13th and 17th centuries. Although we have been

copying in the sense of imitating for a very long time, this type of copying is not the focus of this paper. What is clearly at stake in the phenomenon of copying referred to by the title of my paper, “Control + C, Control + V”, has to do with the exact re-production of a work by mechanical and then by computerized technological means created by humans to automatically perform replicating functions. Thus, from these medieval textual beginnings, the word is often linked to the phenomenon of ‘transcription’ which entails transferring a written work from one medium to another. Originally, this required the physical process of re-writing an ‘original’ document from one text to another text by hand, word for word, letter by letter—including accent and punctuation marks.

The most obvious evidence of a non-mechanical usage of the word’s meaning resides within its application found in the form of the Latin *cōpia*. The English noun ‘copious’, meaning abundance or plenty, clearly has its roots in *cōpia*. Today, the word for copy in Italian is *cōpia*. In Finnish, it is *kopio* or *kopioida*. The important point to note is that in at least one dominant thread of its usage, ‘copy’ carries the sense of abundance and plentitude. What does this tell us about the initial question of ‘why do we copy?’? Could it be the case that copying is done with the purpose of creating an abundance of a work so that there are plenty copies of it to share? If so, then at the core of the copying phenomenon is an ethical perplexity. The perplexity is this: initially, this very mechanical and labor-intensive activity of copying was the work of slave labor. This was the case in the Roman economy where copying was done by slaves to expand the abundance of intellectual wealth at least among an elite birthocracy. The process of preserving, maintaining, and sharing recorded accounts of intellectual activities continued in both

Western and Eastern societies through the dedication and religious fervor of monastic orders. The clergy was convinced that their transcription and translation labor was divine, or at least religious, because it communally bound disparate elements of society together into a more homogenous whole. This was also the case in Asian cultures.<sup>4</sup> In 888 C.E., the Buddhist Scripture, the “Diamond Sutra,” is known to have been block-printed and in 1041, Bi Shen created the first movable clay type. The purpose of this form of copying was meant to provide copies of original, inspirational works to ever-larger quantities of humans looking for spiritual and normative guidance and/or for the simple enjoyment of sharing in the intellectual acts of others. Thus, copying allowed people to cultivate their own creative activities. Furthermore, it resulted in the first copyright act.

### **1. The First Copyright Act**

It was not until the 15th century that the Europeans began to use block engravings on wood to produce multiple copies of texts. With the invention of the printing press by Johannes Gutenberg in 1440, the revolution of copying began. Four years later, Gutenberg set up the first print shop and 11 years later, he produced the first copy of the Bible. After printing 200 copies of the Bible, copies of devotional texts such as illustrated copies of the Psalms followed. After that, Aesop’s Fables with illustrations were reproduced. Both sorts of texts which are ethical in nature were meant to provide guiding normative lessons through a paper medium.. The increasing popularity of this new intellectual medium and the increase in reading and writing books, pamphlets, and journals, led to the opening of hundreds of printing presses in all of the major European cities. By 1499, over 15 million copies of 30,000 original books were circulating

throughout Europe. Needless to say, this technological development increased intellectual stimulation among the masses that were literally moving from the dark ages into the age of Enlightenment.

At first, there were no controls over print shops as the writing, copying, and printing phenomenon exploded in attempts to build paying audiences for the new literary creations. Christopher Marlowe, Francis Bacon, William Shakespeare, Edmund Spenser, Elizabeth I, and even Mary Queen of Scots (with her extensive library) did much to fuel the enthusiasm for professional writing. However, this resulted in negative consequences. For example, because all writing was by decree public domain, no one could be certain if they were reading something really written by Shakespeare or if it was plagiarized by Bacon or Marlowe. While such a dilemma would seem to call for the development of legal means to protect and recompense authors for their original works, copyrighting resulted from different reasons. The phenomenon of copyrighting was created as a way to control the material that was being published. European sovereigns feared that reformist and revolutionary writings would undermine their control, especially if those writings were spread to the masses. In order to maintain control, sovereigns granted monopolies to printing presses run by political loyalists or guilds under the condition that they would not print revolutionary writing. If such printing presses published seditious or heretical information, they would lose their licenses to publish. The first such guild in England was the Stationers' Company which was chartered by the Crown in 1556 in order to stop the spread of reformist Protestant literature. Once a manuscript was purchased by the company, it exercised a perpetual monopoly over the work. Authors could not become

members of the Company (and thus could not self-publish) and were not allowed to earn profits from the book even if it sold well.

In 1710, the English Parliament enacted the first modern copyright law, the Statute of Anne, which created the legal means by which an author could retain the exclusive legal right to publish his own work for 14 years. This law granted the rights of a work to the author and not the printing company. The Statute stipulated that the author had to register the work with the Stationers' Company and have proof of his authorship by having nine copies deposited in selected libraries, such as the Royal Library and the libraries at Oxford, Cambridge, and Edinburgh. A living author could renew his copyright for another 14 years, could also license his copyright to others, and would receive a share of the profits from the publication. This share of the proceeds was called 'royalties' since the rights were directly created and controlled by the 'royal' Crown who at the time was Queen 'Anne'.

## **2. The American Evolution of Copyright Law**

The Founding Fathers of the United States of America used the Statute of Anne as a model to build into the U.S. Constitution the idea that authors have the exclusive right to control their writings.<sup>5</sup> Like in the Statue of Anne, original monopoly was granted for 14 years, but was then extended to 28 years and was renewable once. Under the Copyright Revision Act of 1976, which became effective in 1978, the terms for protecting the monopoly of control were extended to either 75 years or the life of the author plus 50 years. What is even more remarkable is that prior to 1978, works had to be published or



registered to receive protection but post 1978, copyright is granted to the initial creation of the work as long as it is in a tangible form. Registration can occur even after the copying or theft of a copyrightable work by another. Most recently, the Sonny Bono Copyright Term Extension Act extended the terms of protection to the life of the author plus 70 years, or if the work was created by a corporation, then it was protected for 120 years after its creation or 95 years after its publication, whichever is shorter. The stated intent of copyright laws found in the literature containing summaries of the evolution of copyright law is that copyright law is fundamentally meant to benefit the public first and the author second by stimulating the production of as many original works of art, literature, music, and other ‘authored’ works as much as possible. Supporters of copyright laws claim that the original and ongoing intent behind the law is to both protect the interest and works of authors while, at the same time, to provide as much public access to the ideas of the works of authors, thus maintaining a competitive marketplace.<sup>6</sup> In this regard, a strong distinction is made between the expression of a work and the idea or facts inherent in the work. For example, this essay is the tangible expression of my intellectual work composed using a computer,, saved onto a hard-drive, and eventually printed out on paper. Although I can copyright this paper’s tangible form, my ideas about copyright are not copyrightable. Anyone can read my work once expressed and attach their own expression or interpretation to the ideas at hand. Thus far, copyright law has evolved in a fairly linear fashion from Gutenberg’s first printing press and print shop. I maintain, however, that the invention of the computer and the creation of virtual space have fundamentally challenged that linear development. This allows us to question the ethical justification that has driven copyright arrangements for the past 450 years.

The invention of the printing press in the 15th century changed our ethical norms. The invention of the camera 100 years later changed them as well. The camera obscura in 1558 and the Camera Lucida in the early 19th century captured superimposed a distant image on a piece of paper so that an artist could trace it and ‘capture’ it. With the development of the camera came the means to possess and fix images that were previously ungraspable. However, these images remained ephemeral and transitory. The first permanent photo image that was ever captured was by Joseph Nicephore Niepce in 1826.<sup>7</sup> This led to a collaboration with Louis Daguerre and after Nicephore’s death, the daguerrotype and photography as we know it was born.<sup>8</sup> The invention of the motion movie camera soon followed.<sup>9</sup> Humans were now able to capture and impress onto a fixed medium their transitory and ephemeral experiences, thus creating an entirely new and unique way to gather knowledge and record experiences. This physical ‘space’ of recorded experiences quickly developed into an industry and sources of human organization creating whole new sectors of human work and interaction. Bookstores, newspapers, archives, and soon radio and television stations became essential elements in human culture.

### **3. Conclusion**

Part of “the ethics of copying” entails determining why copying refers to the act of transcribing tangible works ‘word for word’ as opposed to the act of employing the ideas and concepts related to the work. Evaluating whether or not something is literally copied in order to determine if it transgresses a consensual standard that limits copying in this or that situation by employing this or that standard of evidence is complicated. It’s

complicated both technically and ethically. It is complicated technically because it is impossible to build anything at all without using existing material. For example, it is impossible to construct a building without using a two-by-four, or to construct a model without using lego blocks, or to construct an algorithm without using a snippet of an existing code. It is complicated ethically because institutionalizing prohibitions to the use of existing codes or to the sampling of existing music can only result, at some level, in the constriction of creative and productive activity. This contradicts the very principle used to defend the restrictive policies of current U.S. copyright laws, namely, to give exclusive rights to intellectual property in order to promote creativity and productivity of a populace.<sup>10</sup> These technical dynamics play out in the public domain that is monitored by government agencies and legal codes. However, both creating music and wrangling with the complexities of algorithms are inherently inspirational forms of work that depend on open access to and use of earlier forms—indeed, effectively dealing with either phenomenon depends on having adequate access to original expressions (or versions) of the work. Thus, the most important issue is an ethical one because, I hope that my historical sketch has made clear enough: we have created legally binding regulations that in turn have developed into socio-economic super-structures that have been progressively employed to normatively determine ethical behaviors of the members of this or that national entity, but primarily determined by policies initiated by the United States.

This is part of the nature of how a legal system is employed to ‘norm’ the members of a group to which it is applied. If I do not follow the law set up by my representative (or dictatorial) government, I experience the deterrents of social ostracization at the

minimum or time in prison at the maximum. For example, in the United States, if convicted of copyright infringement I could be sentenced to both fines (up to several hundred thousands of dollars) and/or imprisonment (from 2 to 6 years), depending on the offense. From a phenomenological perspective, it is also clear that the legal and ethical system of deterrence has been seriously challenged, and not merely by aberrant scofflaws or pirates. This is clearly evident in the development of Digital Rights Management software employed by business entities in the music industry to combat music piracy.<sup>11</sup>

The complications arise at the most fundamental level of how we have come to decide that certain forms of human activity should be controlled for the sake of establishing and then preserving a labor theory of value that has at its core integrating the concepts of maximizing profits with protecting private property. To enforce the policy, a system of socio-economic controls have been instituted that includes establishing and refining structures of observation and surveillance that have become reified into publically funded security projects.<sup>12</sup>

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<sup>1</sup> See “<http://www.copyright.gov/title17/>”

<sup>2</sup> Article 1, Section 8, Clause 8 of the U.S. constitution empowers the United State Congress, “To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.” This is commonly known as the Copyright Clause and has been used to secure for authors for limited times exclusive rights to control the distribution, through copying, of their original and registered works.

<sup>3</sup> WB, volume 3, p. 101

<sup>4</sup> See history of (1) Roman scribes, (2) monastic scribes, Jewish Talmudists, and Muslim scholars as well as (3) Confucian/Hindu literary traditions.

<sup>5</sup> See Endnote 2.

<sup>6</sup> See G.W.F. Hegel, *Philosophy of Right*, trans. Alan White. Newburyport MA: Focus Publishing, 2002, sections 59-69, pp. 55-64. In those sections, Hegel discusses the protection of the value of a thing’s use, such as the protection of ideas as property rights, while allowing for its universalization, that is, its use by others in order to stimulate business diversity for the sake of a growing state. On his anti-social contract model, creativity in the arts, philosophy, and economy would flourish.

<sup>7</sup> [http://en.wikipedia.org/wiki/Nicéphore\\_Niépce](http://en.wikipedia.org/wiki/Nicéphore_Niépce)

<sup>8</sup> “The physautotype (in French, *physautotypie*) was a photographic process, invented by Jopseph Nicephore Niepce and Louis Daguerre in 1832, in which images were produced with the use of lavender dissolved in alcohol as a photographic agent. This solution, once applied to a silver plate, was then exposed in a camera obscura several hours to create a photographic image.”

(<http://en.wikipedia.org/wiki/Physautotype>)

<sup>9</sup> Edison, Eastman, Lumiere.

<sup>10</sup> For the diversity and range of intellectual property legislation on an international level, the World Intellectual Property Organization (<http://www.wipo.int/copyright/en/>) is the best online source for learning more about contemporary conditions in the world of copyright phenomena.

<sup>11</sup> Apple’s DRM software is called “Fairplay” and is used to restrict the number of times that a downloaded tune from its iTunes store can be copied to five times. See:

<http://www.time.com/time/magazine/article/0,9171,1625209,00.html>.

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<sup>12</sup> See for example the article “Contractors Vie for Plum Work Hacking for U.S.” on the front page of the *New York Times* by Christopher Drew and John Markoff. Sunday, May 31, 2009. Drew and Markoff draw attention to the recent surge in government spending—to the tune of tens of billions of dollars—to train and employ “hacker soldiers” to work in the emerging military intelligence industry. Specifically, these new “cyberninjas” are being trained to “oversee the nation’s cybersecurity” which includes vital and sensitive military and political information but also economic data. The field of information security is growing exponentially and now includes maintaining and improving hardware infrastructure, continuous updating and testing of software applications, new forms of auditing accounts, constant monitoring of administrative controls, and updating of cryptographic techniques to not only avoid but to prepare for recovery from inevitable business disasters. For an indication of the plethora of issues involved in information security, see the website of the Information Security Forum which was found in 1989:

<https://www.securityforum.org/index.htm>.